

2007 DRAFTING REQUEST

Bill

Received: **11/05/2007**

Received By: **rnelson2**

Wanted: **As time permits**

Identical to LRB:

For: **Lena Taylor (608) 266-5810**

By/Representing: **Eric**

This file may be shown to any legislator: **NO**

Drafter: **rnelson2**

May Contact:

Addl. Drafters:

Subject: **Courts - civil procedure**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Taylor@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Appellate procedure reform

Instructions:

See Attached 03-3780 SB364 Look for 07 version, possibly 07-0516 toll the time for for filing or responding to a petition

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rnelson2 11/13/2007	bkraft 11/20/2007					S&L
/1			pgreensl 11/26/2007		sbasford 11/26/2007		S&L
/2	rnelson2 12/07/2007	bkraft 12/10/2007	pgreensl 12/11/2007		mbarman 12/11/2007	sbasford 01/11/2008	

FE Sent For: "12" @ intro, 1-25-08
<END>

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/1			pgreensl 11/26/2007	<i>12/11</i>	sbasford 11/26/2007		

FE Sent For:

1/2 bjk 12/10
PS/RS
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/?	rnelson2	1 bjk 11/20	14 pg	14 pg/nw			
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FE Sent For:

<END>

Nelson, Robert P.

From: Balinsky, Brett
Sent: Friday, October 26, 2007 4:40 PM
To: Nelson, Robert P.
Subject: FW: Drafting Requests from Senator Taylor

Attachments: MEMO - BB 102607 re-Judicial Council Drafting.doc

Hi Bob,

Just got this in from Sen. Taylor on behalf of the judicial council. Looks like I drafted the first one and you did nos. 2 and 3 several years ago - should we split it up that way? Do we enter this request with Sen. Taylor or the JC as the requester?

Brett

From: Peterson, Eric
Sent: Friday, October 26, 2007 1:39 PM
To: Balinsky, Brett
Subject: Drafting Requests from Senator Taylor

Hi Brett,

Senator Taylor intends to introduce three pieces of legislation at the request of the Judicial Council. I believe that you drafted the original pieces of legislation that I reference in the attached memo.

Please feel free to call me if you have any questions.

Thanks,

Eric M. Peterson

Office of Senator Lena C. Taylor
Committee of Judiciary & Corrections
Room 415 South, State Capitol
PO Box 7882
Madison WI 53707-7882
608-266-5810 office
608-267-2353 fax
608-772-2682 cellular
eric.peterson@legis.wisconsin.gov
http://www.legis.wi.gov/senate/committees/Judiciary_Corrections/



MEMO - BB 102607
re-Judicial C...

INTEROFFICE MEMORANDUM

TO: BRETT BALINKSY
FROM: ERIC PETERSON, OFFICE OF SENATOR TAYLOR
SUBJECT: 3 DRAFTING REQUESTS
DATE: 10/29/2007

Drafting Request 1 -- *Make appeals in Wis. Stat. Ch. 980 (Sexually Violent Person Commitment) and sec. 971.17 (Not guilty by reason of mental disease or defect commitment) cases subject to the unified appeal procedures set forth in secs. (Rules) 809.30, .31 and .32.*

Redraft 2007 AB 276 (LRB—0516/1) with the following modifications:

- BAB
- Section 14 should be revised so as to amend new sec. 980.038 (4) rather than create sec. 980.061 of the statutes.
 - Remove references to sec. 973.20 in sections 2-7 and 9-10
 - Remove Section 13 of AB 276.

Drafting Request 2 -- *Toll the time limit for filing or responding to a petition for review in the Supreme Court while a timely motion for reconsideration is pending in the Court of Appeals.*

- X
BR
- From 2003 SB 364 (LRB -3780/1) recycle Sections 5, 6 and 16-20 ✓
 - From the Senate Amendment (2003 LRBa2493/2) recycle and include modifications in Lines 5-9 ✓

Drafting Request 3 -- *Allow a juvenile to appeal an order denying the suppression of evidence or exclusion of the juvenile's statements without having to preserve those issues by taking the case to trial.*

- BR
- From 2003 SB 364 (LRB -3780/1) recycle sections 2 and 21
 - From the Senate Amendment (2003 LRBa2493/2) recycle and include modifications in Lines 3 and 4

Insert

2005 BILL

PWF

SA✓
X-ref✓

→ D-N

regen←

1 AN ACT *to renumber and amend* 808.10; *to amend* 808.04 (3), 808.04 (4),
 2 808.04 (7m), 809.62 (1) (intro.), 809.62 (3), 974.02 (1) and 974.02 (2); *to repeal*
 3 *and recreate* 809.24 (4), subchapter III (title) of chapter 809 [precedes 809.30],
 4 809.30 (title), 809.30 (1) (a), 809.30 (1) (b) 4., 809.30 (1) (c), 809.30 (1) (d), 809.30
 5 (1) (e), 809.30 (2) (a), 809.32 (1) (c) (form) and 809.32 (4); and *to create* 808.03
 6 (3), 808.10 (2), 809.32 (5), 809.62 (1m), 938.297 (8), 971.17 (7m) and 980.061 of
 7 the statutes; *relating to: appellate procedure.*

Analysis by the Legislative Reference Bureau

* In criminal cases, current law permits the review of an order denying a motion to suppress evidence or a motion challenging admissibility of a defendant's statement as part of an appeal from a conviction, notwithstanding the fact that the judgment of conviction was entered on a guilty plea. This bill permits review of an order denying a motion to suppress evidence or a motion challenging admissibility of the statement of a child, an expectant mother, or a parent as part of an appeal from a final judgment or order, notwithstanding the fact that the final judgment or order was entered on an admission, consent, or no contest plea to allegations in a petition filed in cases involving children in need of protection or services or a petition to terminate parental rights. This bill also permits the review of orders denying a motion to suppress evidence or a motion challenging admissibility of the statement

BILL

* of a juvenile upon review from a final judgment or order, notwithstanding the fact that the final judgment or order was entered upon a plea of no contest or an admission to the allegations of a petition filed in cases involving juveniles alleged to be delinquent.

* Current law requires that a person seeking Supreme Court review of an adverse court of appeals decision file a petition for review within 30 days of the court of appeals decision. ✓ Current law also provides a procedure for seeking reconsideration of a court of appeals decision, but does not toll the time to file a petition for review while the motion for reconsideration is pending. ✓ This bill tolls the time for filing a petition for review while a motion for reconsideration is pending in the court of appeals, and establishes revised time limits for filing a petition for review or supplemental petition for review, ✓ and the opposing party's responses, ✓ after the court of appeals decides the motion for reconsideration. ✓

* Current law establishes the appellate procedures applicable to various types of cases. Under current law, appeals in criminal cases and cases involving children, juveniles alleged to be delinquent, protective services, or persons subject to commitment due to mental health or drug abuse are directed by statutory cross-reference to follow a set of appeal procedures. Under current law, appeals in cases involving the commitment of sexually violent persons follow a different set of appeal procedures. This bill establishes one integrated appeal procedure for appeals in felony and misdemeanor cases, cases involving children, juveniles alleged to be delinquent, protective services, or persons subject to commitment due to mental health or drug abuse, the commitment of sexually violent persons, as well as proceedings related to the commitment of persons found not guilty by reason of mental defect. This bill also creates a procedure for seeking postdisposition relief in cases involving the commitment of sexually violent persons.

Insert aal → For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill. ✓

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 808.03 (3) of the statutes is created to read:

2 **808.03 (3) REVIEW OF AN ORDER DENYING SUPPRESSION OR EXCLUSION OF EVIDENCE.**

3 An order denying a motion to suppress evidence or a motion challenging the
4 admissibility of a statement of a defendant under s. 971.31 (10) or a juvenile under
5 s. 938.297 (8) may be reviewed upon appeal from a final judgment or order
6 notwithstanding the fact that the final judgment or order was entered upon a plea

BILL

1 of guilty or no contest, an admission, or a consent to an information, criminal
2 complaint, or petition.

3 **SECTION 2.** 808.04 (3) of the statutes is amended to read:

4 808.04 (3) Except as provided in subs. (4) and (7), an appeal in a proceeding
5 under s. 971.17, a criminal case, or a case under ch. 48, 51, 55 or 938, or 980 shall
6 be initiated within the time period specified in s. 809.30 (2) or 809.32 (2).

7 **SECTION 3.** 808.04 (4) of the statutes is amended to read:

8 808.04 (4) Except as provided in sub. (7m), an appeal by the state in either a
9 proceeding under s. 971.17, a criminal case under s. 974.05, or a case under ch. 48
10 or 938, or 980 shall be initiated within 45 days of entry of the judgment or order
11 appealed from.

12 **SECTION 4.** 808.04 (7m) of the statutes is amended to read:

13 808.04 (7m) An appeal from a judgment or order terminating parental rights
14 or denying termination of parental rights shall be initiated by filing the notice
15 required by s. 809.107 (2) within 30 days after the date of entry of the judgment or
16 order appealed from. If the record discloses that the judgment or order appealed from
17 was entered after the notice required by s. 809.107 (2) was filed, the notice shall be
18 treated as filed on the date that the judgment or order was entered. Notwithstanding
19 s. 809.82 (2) (b), this time period may not be enlarged.

20 **SECTION 5.** 808.10 of the statutes is renumbered 808.10 (1) and amended to
21 read:

22 ✓ 808.10 (1) PETITION FOR REVIEW: TIME LIMIT. A decision or order of the court of
23 appeals is reviewable by the supreme court only upon a petition for review granted
24 by the supreme court. The Except as provided in sub. (2) and ss. 809.32 (5) and 809.62

BILL

1 (1m), the petition for review shall be filed in the supreme court within 30 days of the
2 date of the decision of the court of appeals. ✓

3 **SECTION ~~6~~ 808.10** (2) of the statutes is created to read: ✓

4 ✓ **808.10 (2) TOLLING PENDING COURT OF APPEALS RECONSIDERATION.** (a) Filing of ✓
5 a motion for reconsideration in the court of appeals under s. 809.24 (1) within 20 days
6 after the date of a decision of the court of appeals tolls the time for filing a petition
7 for review in the supreme court. ✓

8 (b) If the motion for reconsideration is filed in the court of appeals before any
9 petition for review is filed in the supreme court, the 30-day time period to file the
10 petition for review starts on the date on which the court of appeals determines the
11 motion for reconsideration by filing an order denying the motion for reconsideration
12 or an amended decision. ✓

13 **SECTION ~~7~~ 809.24** (4) of the statutes is repealed and recreated to read: ✓

14 ✓ **809.24 (4)** No motion for reconsideration of a court of appeals decision issued
15 under s. 809.105 or 809.107 is permitted. ✓

16 **SECTION 8.** Subchapter III (title) of chapter 809 [precedes 809.30] of the
17 statutes is repealed and recreated to read:

CHAPTER 809**SUBCHAPTER III****APPEAL PROCEDURE IN COURT OF****APPEALS IN S. 971.17 PROCEEDINGS****AND IN CRIMINAL AND CHS.****48, 51, 55, 938, AND 980 CASES**

24 **SECTION 9.** 809.30 (title) of the statutes is repealed and recreated to read:

BILL

1

2

Signed:

Signature:

3 SECTION ~~17~~. 809.32 (4) of the statutes is repealed and recreated to read:

4 ✓ 809.32 (4) NO-MERIT PETITION FOR REVIEW; PETITIONS. (a) *Petition and*
5 *supplemental petition.* If a fully briefed appeal is taken to the court of appeals and
6 the attorney is of the opinion that a petition for review in the supreme court under
7 s. 809.62 would be frivolous and without any arguable merit, the attorney shall
8 advise the person of the reasons for this opinion and that the person has the right
9 to file a petition for review. If requested by the person, the attorney shall file a
10 petition satisfying the requirements of s. 809.62 (2) (d) and (f) and the person shall
11 file a supplemental petition satisfying the requirements of s. 809.62 (2) (a), (b), (c),
12 and (e).

13 (b) *Time limit.* Except as provided in sub. (5) and s. 808.10, the petition and
14 supplemental petition shall both be filed within 30 days after the date of the decision
15 or order of the court of appeals.

16 (c) *Responses time limit.* Except as provided in sub. (5), an opposing party may
17 file a response to the petition and supplemental petition within 14 days after the
18 service of the supplemental petition.

19 SECTION ~~18~~. 809.32 (5) of the statutes is created to read:

20 ✓ 809.32 (5) NO-MERIT PETITION FOR REVIEW; EFFECT OF MOTION FOR
21 RECONSIDERATION. (a) *Petition.* If a motion for reconsideration is timely filed in the
22 court of appeals under s. 809.24 (1), no party may file a petition or a supplemental
23 petition in the supreme court until after the court of appeals issues an order denying
24 the motion for reconsideration or an amended decision.

BILL

✓
1 (b) *Supplemental petition.* If a motion for reconsideration in the court of
2 appeals under s. 809.24 (1) is denied and a petition for review was filed before the
3 motion for reconsideration was filed, and if the time for filing a supplemental petition
4 under this subsection had not expired when the motion for reconsideration was filed,
5 the supplemental petition may be filed within 14 days after the filing of the order
6 denying the motion for reconsideration or within the time remaining to file the
7 supplemental petition at the time that the motion for reconsideration was filed,
8 whichever is greater. ✓

✓
9 (c) *Notice affirming, withdrawing, or amending pending petition or*
10 *supplemental petition.* If the court of appeals files an amended decision in response
11 to the motion for reconsideration under s. 809.24 (1), any party who filed a petition
12 for review or a supplemental petition for review under this subsection prior to the
13 filing of the motion for reconsideration must file with the clerk of the supreme court
14 a notice affirming the pending petition or supplemental petition, a notice
15 withdrawing the pending petition or supplemental petition, or an amendment to the
16 pending petition or supplemental petition within 14 days after the date of the filing
17 of the court of appeals' amended decision. ✓

✓
18 (d) *Responses.* If a motion for reconsideration is denied and a petition for review
19 or a supplemental petition had been filed before the motion for reconsideration was
20 filed, and if the time for filing a response to the petition or supplemental petition had
21 not expired when the motion for reconsideration was filed, a response to the petition
22 or the supplemental petition may be filed within 14 days of the order denying the
23 motion for reconsideration. If a supplemental petition is filed under par. (b), the
24 responding party may file a response to the supplemental petition within 14 days
25 after service of the supplemental petition. After the petitioning party files the notice

BILL

1 affirming or withdrawing the pending petition or supplemental petition or an
2 amendment to the pending petition or supplemental petition under par. (c), the
3 responding party must file a response to the notice or amendment within 14 days
4 after service of the notice or amendment. The response to the notice or amendment
5 may be an affirmation of the responding party's earlier response or a new response. ✓

6 **SECTION 19.** 809.62 (1) (intro.) of the statutes is amended to read: ✓

7 ✓ 809.62 (1) (intro.) A party may file with the supreme court a petition for review
8 of an adverse decision of the court of appeals pursuant to s. 808.10 ✓ within 30 days
9 of the date of the decision of the court of appeals. ✓ Supreme court review is a matter
10 of judicial discretion, not of right, and will be granted only when special and
11 important reasons are presented. The following, while neither controlling nor fully
12 measuring the court's discretion, indicate criteria that will be considered:

13 **SECTION 20.** 809.62 (1m) of the statutes is created to read: ✓

14 ✓ 809.62 (1m) (a) If a motion for reconsideration is timely filed in the court of
15 appeals under s. 809.24 (1), no party may file a petition for review in the supreme
16 court until after the court of appeals issues an order denying the motion for
17 reconsideration or an amended decision. ✓

18 (b) If a motion for reconsideration is denied and a petition for review had been
19 filed before the motion for reconsideration was filed, and if the time for filing a
20 response to the petition had not expired when the motion for reconsideration was
21 filed, a response to the petition may be filed within 14 days of the order denying the
22 motion for reconsideration. ✓

23 (c) If the court of appeals files an amended decision in response to the motion
24 for reconsideration under s. 809.24 (1), any party who filed a petition for review prior
25 to the filing of the motion for reconsideration must file with the clerk of the supreme

BILL

1 court a notice affirming the pending petition, a notice withdrawing the pending
2 petition, or an amendment to the pending petition within 14 days after the date of
3 the filing of the court of appeals' amended decision.

4 (d) After the petitioning party files a notice affirming or withdrawing the
5 pending petition or an amendment to the pending petition under par. (c), the
6 responding party must file a response to the notice or amendment within 14 days
7 after service of the notice or amendment. The response may be an affirmation of the
8 responding party's earlier response or a new response.

9 **SECTION 21.** 809.62 (3) of the statutes is amended to read:

10 809.62 (3) Except as provided in sub. (1m) and s. 809.32 (4) and (5), an opposing
11 party may file a response to the petition within 14 days after the service of the
12 petition.

13 **SECTION 22.** 938.297 (8) of the statutes is created to read:

14 938.297 (8) An order denying a motion to suppress evidence or a motion
15 challenging the admissibility of a statement of a juvenile may be reviewed upon
16 appeal from a final judgment or order notwithstanding the fact that such final
17 judgment or order was entered upon an admission or a plea of no contest to the
18 allegations in the petition.

19 **SECTION 23.** 971.17 (7m) of the statutes is created to read:

20 971.17 (7m) MOTION FOR POSTDISPOSITION RELIEF AND APPEAL. (a) *Appeal by*
21 *respondent.* A motion for postdisposition relief by a person committed under this
22 section shall be made in the time and manner provided in ss. 809.30 to 809.32. An
23 appeal by a person who has been committed under this section from a final order
24 under this section or from an order denying a motion for postdisposition relief shall
25 be taken in the time and manner provided in ss. 808.04 (3) and 809.30 to 809.32. The

BILL**SECTION 26**

chapter or from an order denying a motion for postdisposition relief by a person committed under this chapter shall be taken in the time and manner provided in ss. 808.04 (3) and 809.30 to 809.32. The person shall file a motion for postdisposition relief in circuit court before a notice of appeal is filed unless the grounds for seeking relief are sufficiency of the evidence or issues previously raised.

(2) APPEAL BY STATE. An appeal by the state from a final judgment or order under this chapter may be taken to the court of appeals within the time specified in s. 808.04 (4) and in the manner provided for civil appeals under chs. 808 and 809.

SECTION ~~27~~. Effective date.

(1) This act takes effect on the first day of the 4th month beginning after publication. ✓

(END) ✓

D-note

**2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3393/ins

RPN:.....

bjk

insert anl:

- his or her
- * ~~Q~~ Under current law, if the attorney in a case appealed ~~the~~ to court of appeals is of the opinion that a petition for review in the supreme court would be frivolous, he or she must advise ~~the~~ client of the reasons for that opinion and that the client may file a petition for review. If the client decides to appeal to the supreme court, the attorney shall file a petition for review that includes the facts and procedural status of the case, the dispositions of the case in the lower courts, and an appendix containing the judgments, orders, findings of fact, conclusions of law, and other decisions necessary for an understanding of the petition. The client files a supplemental petition containing the statement of the issues and arguments in the case. The petition and supplemental petition must be filed in the supreme court within 30 days after the decision or order of the court of appeals.
 - * ~~A~~ This bill prohibits the filing of ~~the~~ petition or supplemental petition in the supreme court until after the court of appeals issues a response to a timely motion for reconsideration of its decision or order. If a person filed a petition or supplemental petition in the supreme court before the court of appeals issued a response to a timely motion for reconsideration, the bill requires the person to file a notice affirming, withdrawing, or amending the pending petition or supplemental petition, within 14 days after the court of appeals decision. If a petition or supplemental petition in the supreme court was made before the court of appeals issued a response to a motion for reconsideration, and that motion was denied, the bill allows the other party 14 days after the court of appeals denial to file a response to the petition or supplemental petition. The bill gives that party the same 14-day period to a respond to a petition or supplemental petition filed after the motion for reconsideration was denied, or after the petition or supplemental petition was affirmed or amended in response to an amended court of appeals decision, after reconsideration.

end insert anl.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3393/dn

RPN

bjk

Date

draft

I am not sure my analysis adequately explains this bill. I suggest that you share the draft with Judicial Council members so they can review the bill and analysis. ✓

Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511
E-mail: robert.nelson@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3393/1dn
RPN:bjk:pg

November 26, 2007

I am not sure my analysis adequately explains this draft. I suggest that you share the draft with Judicial Council members so they can review the bill and analysis.

Robert P. Nelson
Senior Legislative Attorney
Phone: (608) 267-7511
E-mail: robert.nelson@legis.wisconsin.gov

Nelson, Robert P.

From: Peterson, Eric
Sent: Friday, December 07, 2007 11:58 AM
To: Nelson, Robert P.
Subject: Draft Edits

Hi Bob,

Can you make the below changes and resend the drafts?

Thanks,
Eric M. Peterson
Office of Senator Lena C. Taylor
608-266-5810

Appellate Procedure (LRB 07-3394/1):
Perfect as is.

Appellate Time Limits (LRB 07-3393/1), Analysis by Legislative Reference Bureau:

Insert "timely" between "a" and "motion" in the 3rd sentence.

Delete ", and establishes revised time limits...decides the motion for reconsideration" from the 3rd sentence.

Add as a new 4th sentence "This bill also establishes revised time limits within which a petition may be filed, amended or withdrawn, and within which an opposing party may respond, following the court of appeals determination of the reconsideration motion."

Delete paragraphs 2 and 3.

12/07/2007



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-3393/4

RPN:bjk:pg

3e
stay

2007 BILL

SA ✓

may be filed,
amended, or withdrawn
and within which an

regen. cat.

1 AN ACT *to renumber and amend* 808.10; *to amend* 809.62 (1) (intro.) and
2 809.62 (3); *to repeal and recreate* 809.24 (4) and 809.32 (4); and *to create*
3 808.10 (2), 809.32 (5) and 809.62 (1m) of the statutes; **relating to:** appellate
4 time limits and procedure.

within which a

Analysis by the Legislative Reference Bureau

Current law requires that a person seeking supreme court review of an adverse court of appeals decision file a petition for review within 30 days of the court of appeals decision. Current law also provides a procedure for seeking reconsideration of a court of appeals decision, but does not toll the time to file a petition for review while the motion for reconsideration is pending. This bill tolls the time for filing a petition for review while a motion for reconsideration is pending in the court of appeals and establishes revised time limits for filing a petition for review or supplemental petition for review, and the opposing party's responses, after the court of appeals decides the motion for reconsideration.

timely

The bill

Under current law, if the attorney in a case appealed to the court of appeals is of the opinion that a petition for review in the supreme court would be frivolous, he or she must advise his or her client of the reasons for that opinion and that the client may file a petition for review. If the client decides to appeal to the supreme court, the attorney shall file a petition for review that includes the facts and procedural status of the case, the dispositions of the case in the lower courts, and an appendix containing the judgments, orders, findings of fact, conclusions of law, and other decisions necessary for an understanding of the petition. The client files a

determination of

may respond following

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supplemental petition containing the statement of the issues and arguments in the case. The petition and supplemental petition must be filed in the supreme court within 30 days after the decision or order of the court of appeals.

This bill prohibits the filing of a petition or supplemental petition in the supreme court until after the court of appeals issues a response to a timely motion for reconsideration of its decision or order. If a person filed a petition or supplemental petition in the supreme court before the court of appeals issued a response to a timely motion for reconsideration, the bill requires the person to file a notice affirming, withdrawing, or amending the pending petition or supplemental petition, within 14 days after the court of appeals decision. If a petition or supplemental petition in the supreme court was made before the court of appeals issued response to a motion for reconsideration, and that motion was denied, the bill allows the other party 14 days after the court of appeals denial to file a response to the petition or supplemental petition. The bill gives that party the same 14-day period to respond to a petition or supplemental petition filed after the motion for reconsideration was denied, or after the petition or supplemental petition was affirmed or amended in response to an amended court of appeals decision, after reconsideration.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

✓
1 **SECTION 1.** 808.10 of the statutes is renumbered 808.10 (1) and amended to
2 read:

3 808.10 (1) PETITION FOR REVIEW: TIME LIMIT. A decision or order of the court of
4 appeals is reviewable by the supreme court only upon a petition for review granted
5 by the supreme court. The Except as provided in sub. (2) and ss. 809.32 (5) and 809.62
6 (1m), the petition for review shall be filed in the supreme court within 30 days of the
7 date of the decision of the court of appeals.

8 ✓
SECTION 2. 808.10 (2) of the statutes is created to read:

9 808.10 (2) **TOLLING PENDING COURT OF APPEALS RECONSIDERATION.** (a) Filing of
10 a motion for reconsideration in the court of appeals under s. 809.24 (1) within 20 days
11 after the date of a decision of the court of appeals tolls the time for filing a petition
12 for review in the supreme court.

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1 (b) If the motion for reconsideration is filed in the court of appeals before any
2 petition for review is filed in the supreme court, the 30-day time period to file the
3 petition for review starts on the date on which the court of appeals determines the
4 motion for reconsideration by filing an order denying the motion for reconsideration
5 or an amended decision.

6 **SECTION 3.** 809.24 (4) of the statutes is repealed and recreated to read:

7 809.24 (4) No motion for reconsideration of a court of appeals decision issued
8 under s. 809.105 or 809.107 is permitted.

9 **SECTION 4.** 809.32 (4) of the statutes is repealed and recreated to read:

10 809.32 (4) NO-MERIT PETITION FOR REVIEW; PETITIONS. (a) *Petition and*
11 *supplemental petition.* If a fully briefed appeal is taken to the court of appeals and
12 the attorney is of the opinion that a petition for review in the supreme court under
13 s. 809.62 would be frivolous and without any arguable merit, the attorney shall
14 advise the person of the reasons for this opinion and that the person has the right
15 to file a petition for review. If requested by the person, the attorney shall file a
16 petition satisfying the requirements of s. 809.62 (2) (d) and (f) and the person shall
17 file a supplemental petition satisfying the requirements of s. 809.62 (2) (a), (b), (c),
18 and (e).

19 (b) *Time limit.* Except as provided in sub. (5) and s. 808.10, the petition and
20 supplemental petition shall both be filed within 30 days after the date of the decision
21 or order of the court of appeals.

22 (c) *Responses time limit.* Except as provided in sub. (5), an opposing party may
23 file a response to the petition and supplemental petition within 14 days after the
24 service of the supplemental petition.

25 **SECTION 5.** 809.32 (5) of the statutes is created to read:

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1 809.32 (5) NO-MERIT PETITION FOR REVIEW; EFFECT OF MOTION FOR
2 RECONSIDERATION. (a) *Petition*. If a motion for reconsideration is timely filed in the
3 court of appeals under s. 809.24 (1), no party may file a petition or a supplemental
4 petition in the supreme court until after the court of appeals issues an order denying
5 the motion for reconsideration or an amended decision.

6 (b) *Supplemental petition*. If a motion for reconsideration in the court of
7 appeals under s. 809.24 (1) is denied and a petition for review was filed before the
8 motion for reconsideration was filed, and if the time for filing a supplemental petition
9 under this subsection had not expired when the motion for reconsideration was filed,
10 the supplemental petition may be filed within 14 days after the filing of the order
11 denying the motion for reconsideration or within the time remaining to file the
12 supplemental petition at the time that the motion for reconsideration was filed,
13 whichever is greater.

14 (c) *Notice affirming, withdrawing, or amending pending petition or*
15 *supplemental petition*. If the court of appeals files an amended decision in response
16 to the motion for reconsideration under s. 809.24 (1), any party who filed a petition
17 for review or a supplemental petition for review under this subsection prior to the
18 filing of the motion for reconsideration must file with the clerk of the supreme court
19 a notice affirming the pending petition or supplemental petition, a notice
20 withdrawing the pending petition or supplemental petition, or an amendment to the
21 pending petition or supplemental petition within 14 days after the date of the filing
22 of the court of appeals' amended decision.

23 (d) *Responses*. If a motion for reconsideration is denied and a petition for review
24 or a supplemental petition had been filed before the motion for reconsideration was
25 filed, and if the time for filing a response to the petition or supplemental petition had

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1 not expired when the motion for reconsideration was filed, a response to the petition
2 or the supplemental petition may be filed within 14 days of the order denying the
3 motion for reconsideration. If a supplemental petition is filed under par. (b), the
4 responding party may file a response to the supplemental petition within 14 days
5 after service of the supplemental petition. After the petitioning party files the notice
6 affirming or withdrawing the pending petition or supplemental petition or an
7 amendment to the pending petition or supplemental petition under par. (c), the
8 responding party must file a response to the notice or amendment within 14 days
9 after service of the notice or amendment. The response to the notice or amendment
10 may be an affirmation of the responding party's earlier response or a new response.

11 **SECTION 6.** 809.62 (1) (intro.) of the statutes is amended to read:

12 809.62 (1) (intro.) A party may file with the supreme court a petition for review
13 of an adverse decision of the court of appeals pursuant to s. 808.10 ~~within 30 days~~
14 ~~of the date of the decision of the court of appeals.~~ Supreme court review is a matter
15 of judicial discretion, not of right, and will be granted only when special and
16 important reasons are presented. The following, while neither controlling nor fully
17 measuring the court's discretion, indicate criteria that will be considered:

18 **SECTION 7.** 809.62 (1m) of the statutes is created to read:

19 809.62 (1m) (a) If a motion for reconsideration is timely filed in the court of
20 appeals under s. 809.24 (1), no party may file a petition for review in the supreme
21 court until after the court of appeals issues an order denying the motion for
22 reconsideration or an amended decision.

23 (b) If a motion for reconsideration is denied and a petition for review had been
24 filed before the motion for reconsideration was filed, and if the time for filing a
25 response to the petition had not expired when the motion for reconsideration was

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1 filed, a response to the petition may be filed within 14 days of the order denying the
2 motion for reconsideration.

3 (c) If the court of appeals files an amended decision in response to the motion
4 for reconsideration under s. 809.24 (1), any party who filed a petition for review prior
5 to the filing of the motion for reconsideration must file with the clerk of the supreme
6 court a notice affirming the pending petition, a notice withdrawing the pending
7 petition, or an amendment to the pending petition within 14 days after the date of
8 the filing of the court of appeals' amended decision.

9 (d) After the petitioning party files a notice affirming or withdrawing the
10 pending petition or an amendment to the pending petition under par. (c), the
11 responding party must file a response to the notice or amendment within 14 days
12 after service of the notice or amendment. The response may be an affirmation of the
13 responding party's earlier response or a new response.

14 **SECTION 8.** 809.62 (3) of the statutes is amended to read:

15 809.62 (3) Except as provided in sub. (1m) and s. 809.32 (4) and (5), an opposing
16 party may file a response to the petition within 14 days after the service of the
17 petition.

18 **SECTION 9. Effective date.**

19 (1) This act takes effect on the first day of the 4th month beginning after
20 publication.

21 (END)

Basford, Sarah

From: Peterson, Eric
Sent: Friday, January 11, 2008 12:47 PM
To: LRB.Legal
Subject: Draft Review: LRB 07-3393/2 Topic: Appellate procedure reform

Please Jacket LRB 07-3393/2 for the SENATE.